

ARK:jsg/020706/1901041.RESFOA-2

combination of a flavor and the particular carboxamide set forth in the present claims. The Office Action concludes that it would have been obvious to use any flavor because the choice of flavor is seen to be no more than a matter of choice. Claims 14 and 18 have been rejected over U.S. Patent No. 5,372,824 (Record) for essentially the same reasons. The rejections are hereby traversed and reconsideration is respectfully requested.

Applicants have previously discussed the Cherukuri reference with the Examiner during a telephonic interview on July 14, 2005 as documented in Applicant's response of August 26, 2005. At that time, Applicants emphasized that Cherukuri taught an edible composition such as a chewing gum having a unique, long lasting cooling perception which provides the user with a significantly enhanced perception of breath-freshening without bitterness. This discovery came about by the unexpected results achieved with the combination of the claimed carboxamide and menthol in specific amounts (see Cherukuri, column 2, lines 34-37).

It was also pointed out that Cherukuri was clear that the use of the carboxamide alone or menthol alone failed to achieve the cooling effect claimed in the reference (Cherukuri, column 2, lines 38-41).

Thus, the reference is quite clear that the cooling agent and menthol must be used together and the absence of the combination is a teaching away from the fair disclosure of Cherukuri.

As has previously been explained, Applicants' invention is the combination of the carboxamide and one of a specific group of limited flavoring agents which omit any flavoring agent that contains menthol or behaves as menthol (i.e. exhibits an independent cooling effect). Thus, the present invention could not have been derived from Cherukuri because Cherukuri teaches that a carboxamide and menthol must be combined together. The present invention clearly omits menthol and combines the carboxamide with one of a select group of non-mint flavors to achieve an enhanced flavoring composition which may be used as part of a chewing gum composition or confectionery composition.

During the telephonic interview, the Examiner referred to Table V and particularly Sample 3 of Cherukuri showing a confectionery composition containing cherry flavor and a cooling compound absent the presence of menthol. On the surface, this sample would appear to be the combination of cherry flavor (one of Applicants' select flavors) and the cooling compound absent menthol or a compound that behaves like menthol.

The Examiner will note the presence of eucalyptus oil in each of the samples including Sample 3. A major constituent of eucalyptus oil is cineole which has a similar effect to menthol in that both compounds stimulate the trigeminal nerve thereby eliciting a cooling sensation. The cineole, like menthol is also aromatic and can be used to give additional nasal impact. Eucalyptus oil, like peppermint oil (which contains menthol) is an essential oil that provides an independent cooling effect. Thus, while Sample 3 of Table V excludes menthol, the Sample contains a

flavoring system which includes a compound that behaves like menthol (i.e. provides an independent cooling effect).

The results of Table V are shown in Figure 3 and it is noted that formulation (c) containing the carboxamide cooling compound but not menthol shows a distinct cooling perception as compared with Sample 1 where no cooling compound and no menthol is present. Indeed, there would be no cooling effect expected from Sample 1 which did not contain the carboxamide or the menthol. However, there is a perceived cooling effect because of the presence of eucalyptus oil. Thus, Sample 3 is clearly consistent with the teaching of Cherukuri. Maximum cooling effect is achieved by the presence of the carboxamide and menthol. Lower values of cooling effect are achieved when the carboxamide is present but menthol is not where each sample contains eucalyptus oil, known to have some cooling effect.

The present claims specifically exclude eucalyptus oil. This is because the language "consisting essentially of" does not embrace menthol or equivalent compounds such as eucalyptus oil. The enhanced flavoring composition of the present invention is limited to those flavors which are set forth in the claims and it is only when these flavors are combined with the carboxamide that one obtains an enhanced flavoring composition, which was totally unexpected from the Cherukuri reference which teaches that the carboxamide must be combined with menthol.

The Record reference likewise concerns mint flavored agents. Record removes some of the 1-menthol from flavors and then uses the carboxamide to add

ARK:jsg/020706/1901041.RESFOA-2

cooling effect because of the loss of some menthol. As we have previously indicated, the present invention concerns an enhanced flavoring composition (for use with chewing gum and confectionery compositions) in which the flavoring agent is not menthol and therefore there is no 1-menthol present.

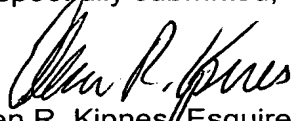
Record shows that it was conventional to use the carboxamide as a cooling agent in combination with menthol. What Applicants have discovered is a marked departure from the prior art. The carboxamide can be used as a flavor potentiator for non-mint flavors and specifically those flavors set forth in the present claims. Nothing in the prior art teaches or suggests the surprising and unobvious nature of this result.

In view of the foregoing, Applicants submit that the present application is in condition for allowance and early passage to issue is therefore deemed proper and is respectfully requested.

It is believed that no fee is due in connection with this matter. However, if any fee is due, it should be charged to Deposit Account No. 23-0510.

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